

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

June 6, 2006

The Rhode Island Ethics Commission held its 11th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, June 6, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair Frederick K. Butler
Barbara Binder, Vice Chair Ross Cheit
George E. Weavill, Jr., Secretary**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne Leyden and Macall Robertson; and Commission Investigators Steven Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:08 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open Session held on May 16, 2006. Upon motion made by Commissioner Binder, duly seconded by Commissioner Weavill, it was

VOTED: To approve the minutes of the Open Session held on May 16, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., and Ross Cheit.

ABSTENTION: Frederick K. Butler.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of Gary King, a member of the Gloucester School Committee. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation. She advised that the petitioner informed her that he is no longer the Chairman of the Gloucester School Committee and the draft opinion should be considered by the Commission as so corrected. In response to Commissioner Butler, Staff Attorney Robertson informed that if the petitioner's subcontracting work for the energy programs came before the school committees he would

have to recuse himself, and if the matter required him to represent himself before the committees, he could possibly seek a hardship exception.

Upon the motion made by Commissioner Cheit, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Gary King, a member of the Gloucester School Committee, as corrected.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Evan H. Matthews, the Director of

Planning & Development for the Quonset Development Corporation. The petitioner was present. Staff Attorney Gramitt presented the Commission Staff recommendation. In response to Commissioner Weavill, the petitioner stated that he would resign before the process of purchasing land began. In response to Commissioner Weavill, the petitioner informed that the Managing Director decides which properties are sold, whereas he helps real estate buyers through the approval process and ensures that all submissions are complete. He advised that he makes sure the use proposed is allowed and that it is consistent with the master plan and development regulations. In response to Commissioner Weavill, the petitioner stated that if he

decided to purchase land, he would resign, a new Director would be appointed, and his purchase would be evaluated the same as any other project. He stated that there is no specific plan to purchase at this time and he is only looking for general guidance.

In response to Commissioner Weavill, the petitioner informed that none of his potential partners in the purchase come from the QDC. Commissioner Cheit expressed concern as to the prematurity of the request. Staff Attorney Gramitt advised that, although the petitioner does not yet know if he will purchase the property, he cannot proceed without some guidance from the Commission. In response to Commissioner Cheit, the petitioner stated that he does not plan to resign if he receives an advisory opinion as the dealing is in the preliminary stages and remains hypothetical.

Upon the motion made by Commissioner Weavill, duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Evan H. Matthews, the Director of Planning & Development for the Quonset Development Corporation.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Richard W. Singleton, a

legislator serving in the Rhode Island House of Representatives. The petitioner was not present. Staff Attorney Gramitt presented the Commission Staff recommendation. In response to Commissioner Cheit, Staff Attorney Gramitt stated that he previously informed the petitioner of the advice forthcoming in the draft opinion.

Upon the motion made by Commissioner Binder, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Richard W. Singleton, a legislator serving in the Rhode Island House of Representatives.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Michael S. Pisaturo, a member of the

Cranston City Council. The petitioner was not present. Staff Attorney Leyden advised that the issue presented is now moot and the request is withdrawn, given that the petitioner is no longer seeking office. In response to Commissioner Binder, Staff Attorney Leyden informed that she would draft correspondence confirming the foregoing and advising that the petitioner no longer has safe harbor.

The next advisory opinion is that of Robert Ritacco, a member of the

Westerly

Zoning Board. The petitioner was not present. Staff Attorney Leyden presented the

Commission Staff recommendation. In response to Commissioner Binder, Staff Attorney

Leyden informed that the last paragraph of the draft opinion addresses concerns regarding appearances of impropriety, although not a violation of the Code. Commissioner Binder expressed that she would have to vote no on this opinion and suggested that under agency law theory the petitioner could be required to recuse when the attorney appears before

the Zoning Board. Commissioner Butler noted that it is tenuous that the petitioner would

bring pressure on the attorney and that this would in some way affect the case involving the tenant.

In response to Commissioner Cheit, Staff Attorney Leyden stated that the

petitioner could recuse from the matter to avoid an appearance of impropriety, regardless of whether an actual conflict exists.

Commissioner Cheit questioned whether he would have actual grounds to recuse and noted that the statute should not allow someone to recuse if there is no actual basis for it. He added that he believes an appearance of impropriety exists, but that it is not a violation of the Code. Chair Lynch agreed. Commissioner Binder

stated that she would like to see research on agency theory, which may provide a legal basis for prohibiting the petitioner's participation.

Legal Counsel Managhan advised that an attorney acts as a client's agent only with regard to the matter for which representation was obtained. Commissioner Binder disagreed.

Upon the motion made by Chair Lynch, duly seconded by Commissioner Cheit, it was

**VOTED: To issue an advisory opinion, attached hereto, to Robert Ritacco, a
member of the Westerly Zoning Board.**

AYES: James Lynch, Sr., and Ross Cheit.

NOES: Barbara Binder, George E. Weavill, Jr., and Frederick K. Butler.

No advisory opinion was issued for lack of five affirmative votes.

**At approximately 9:45 a.m., upon motion made by Commissioner Weavill,
duly seconded by Commissioner Binder, it was unanimously**

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws §§ 42-46-5 (a)(2) and 5(a)(4), to wit:

a.) To approve the minutes of Executive Session held on May 16, 2006.

**b.) Handrigan v. RIEC,
C.A. No. PC05-3795**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,
Frederick K. Butler, and Ross Cheit.**

At approximately 9:55 a.m., the Commission returned to Open Session. Chair

Lynch reported out that in Executive Session the Commission voted to approve the Executive Session minutes of May 16, 2006 and that no action was taken on the Handrigan matter.

The next order of business was a motion to seal the Executive Session held on June 6, 2006. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To seal the seal the Executive Session held on June 6, 2006.

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,
Frederick K. Butler, and Ross Cheit.**

The next order of business was discussion of draft regulatory proposals regarding Nepotism and Revolving Door. Senior Staff

Attorney D'Arezzo presented a summary of Draft Proposed Regulations A, B, and C and reviewed the amended language in Draft Proposals A and B, as per the Commission's request at the last meeting. She advised that Commissioner Binder noted that Draft Proposal B does not contain an exception allowing municipal senior staff to move laterally to other such positions. Commissioner Binder expressed her opinion that municipal senior staff should be able to move around to different senior staff positions to accommodate changing needs. Chair Lynch and Commissioner Weavill expressed their support for adding such an exception.

Senior Staff Attorney D'Arezzo summarized Draft Proposed Regulation C and informed that it was not changed at the last meeting. She also summarized Draft Proposed Regulation D and informed that it was changed since the last meeting to accommodate the newly drafted Proposed Regulation E. She advised that the Staff recently discovered some language problems with the existing Draft Proposal D and suggests returning it to the Staff to rework the language to fulfill the Commission's intended purpose. She pointed out that the original subsection (a) has been removed, as it is now captured in the new Draft Proposal E, and that the scope of the current subsection (a) is too broad. She explained that as currently drafted subsection (a) prohibits a person from appearing before any agency, when the intent was only to limit representations before the agency with which the person has substantial involvement. In response to Commissioner Binder, Senior Staff Attorney D'Arezzo

indicated that the Staff is working on language to address this concern.

Senior Staff Attorney D'Arezzo also pointed out that the Staff suggests clarifying that subsection (a) applies to substantial control, substantial participation, and substantial influence. She noted that the word "or" in the current language does not make this clear and suggested that the regulation prohibit substantial involvement, which can be defined in subsection (a)(4) to include actions of substantial control, substantial participation, and substantial influence. The Commissioners voiced no objections to these changes.

Lastly, Senior Staff Attorney D'Arezzo stated that Draft Proposal D's language in subsection (b) should be reconsidered, as the statutes to which it refers do not provide a consistent definition of the individuals targeted by the regulation. She suggested that it may be better to create a list of target state executive agencies to which the prohibition will apply. She noted that, in addition to targeting directors or heads of state departments, it appears that the Commission also wishes to target some heads of divisions of the Department of Administration. She explained, for example, that the Division of Fire Safety is not considered a state department under title 42 and was statutorily created within the state executive department. She noted that it is headed by the State Fire Marshall, not a director, who is appointed by the governor with the advice and consent of the Senate. She pointed out that similar inconsistencies

apply to other state agencies that the Commission may wish to capture under this regulation, such as the Division of Taxation and Department of Motor Vehicles.

As an alternative to creating a list of positions and agencies to which the regulation applies, Senior Staff Attorney D'Arezzo suggested that the language of Draft Proposal D be worded broadly to capture directors and heads of state agencies who are appointed by the governor. She informed that the Staff needs more guidance regarding who the regulation is meant to target. Commissioner Binder remarked that she did not favor a list of agencies as it could change or miss an agency. She expressed her support for drafting broader language. Senior Staff Attorney D'Arezzo informed that the Staff will work on redrafting the language to address these concerns.

Staff Attorney Gramitt then presented a summary of the newly drafted Proposed Regulation E. In response to Commissioner Butler, Staff Attorney Gramitt explained that subsection (a)(2) clarifies the Commission's existing interpretation of section 5(e) in the advisory opinion context. In response to Commissioner Cheit, Staff Attorney Gramitt informed that this clarification would address some of the concerns raised by Handrigan, but would not cover the question of how to define a hardship. Commissioner Cheit voiced his support of the Commission next working on regulations defining hardship. Senior Staff Attorney Gramitt pointed out that there may be advantages to keeping the definition of hardship more flexible. In

response to Commissioner Weavill, Staff Attorney Gramitt asked for some time to consider whether subsection (a)(3) would impact advice and consent. Chair Lynch recognized H. Philip West, the Executive Director of Common Cause, who noted that advice and consent is a legislative function. In response to Commissioner Butler, Staff Attorney Gramitt informed that the new Draft Proposal E and section 5(e) do not prohibit a business associate from representing an interest shared with an official before the official's board as long as the official recuses and is not involved in obtaining the representation. Senior Staff Attorney D'Arezzo then summarized Draft Proposed Regulation F and noted that no changes were made to it since the last meeting.

The next order of business was the Director's Report. Executive Director Willever reported that advisory opinions are up to date and there are six complaints pending. He informed that Legal Counsel Managhan's service contract was provided to the Commissioners for informational purposes and will appear on the next meeting's agenda.

He thanked Staff Attorney Gramitt for meeting with a Chinese delegation at Bryant University with Commissioner Segovis.

Senior Staff Attorney D'Arezzo reported on options available to the Commission for electronic recordation of Commission meetings and discussed quotes provided by Ebsecontoel and DEC. She reported that only DEC provided a usable quote for an unobtrusive, portable digital recording machine which could be placed on the conference

table and turned on at the start of the meeting. She summarized the machine's features and advised that it costs \$489.00 and comes with software allowing the Commission, if it so chooses, to save the recordings to its computer server as audio files. She reported that other vendors sell the same device for a higher cost. Chair Lynch stated that there was a consensus to record the meetings and expressed his support of the DEC machine. Commissioner Weavill agreed, but indicated that the Commissioners had previously expressed their disfavor of retaining the recordings beyond approval of the minutes.

Commissioner Cheit expressed his opinion that the Commission think about how to use the device before recording the meetings. Commissioner Butler agreed and suggested that the Commission first create policies for recording. Executive Director Willever expressed his support for the DEC machine and suggested that the Commission buy it first and then determine how to best use it. He stated that he did not see the Commission finding a better device for less money and noted that there is a cost-benefit analysis to obtaining more quotes. Commissioner Cheit expressed his opinion that the Commission be aware of the recording retention policies of other public bodies.

At approximately 10:50 a.m., upon motion made by Commissioner Binder, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To purchase the DEC recording machine.

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,
Frederick K. Butler, and Ross Cheit.**

Commissioner Weavill inquired whether having clerical staff take the minutes would be a better use of resources. Executive Director Willever expressed his opinion that clerical staff is not geared to take the minutes as well as an attorney given that important determinations must be made and complex legal issues arise. He stated that an attorney would still have to review the minutes and the current system works well. Chair Lynch noted that several years ago the Office Manager took the minutes. Senior Staff Attorney D'Arezzo informed that the former Executive Director had a Staff Attorney take over that responsibility due to the discussion of complex legal issues and the need for someone with legal training to take the minutes. Chair Lynch pointed out that legal staff is present at the Commission meetings anyway, which may be preferable to taking clerical staff away from the office and other tasks. Chair Lynch expressed his thanks to the Staff for placing information in the Commissioners' packets about the Staffs' outreach activities.

The next order of business was New Business. Commissioner Cheit stated that he had questions about the service contract for the Commission's Legal Counsel and inquired whether it would be best to address them in Executive Session. In response to Chair Lynch,

Senior Staff Attorney informed that the item was not noticed on the agenda and, although they could vote to go back into Executive Session, they could not take any action on this matter.

At approximately 10:50 a.m., upon motion made by Commissioner Cheit, duly seconded by Commissioner Binder, it was unanimously

VOTED: To reconvene in Executive Session for the limited purpose of obtaining information about the legal services contract of the Commission's Legal Counsel.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Frederick K. Butler, and Ross Cheit.

At approximately 11:03 a.m., the Commission reconvened in Open Session.

Chair Lynch reported out that in Executive Session the Commission took no action and only discussed the procedure for re-employing the Commission's Legal Counsel.

Commissioner Weavill expressed his concern that the proposed regulations remain on the agenda so that they will move forward. Chair Lynch informed that the Nepotism Subcommittee is meeting today and will have its proposals ready for the next Commission meeting. In response to Commissioner Weavill, Staff Attorney

Gramitt remarked that his 2003 memo contains the Staff's suggested regulatory changes at that time and was provided solely in response to the Commission's request. Commissioner Weavill inquired whether those proposals could be addressed by the Commission at the same time as the current draft proposals. Chair Lynch stated that the present proposals should not be held up. Commissioner Binder expressed her belief that they were addressing the regulatory issues in clusters. Commissioner Weavill noted that some of the prior proposals are minor and could go forward now.

Staff Attorney Gramitt advised that the prior proposals require the Commission to engage in policy discussions, including whether the definition of "business" should include not-for-profit entities. In response to Commissioner Weavill, he explained that there is a moratorium on accepting financial disclosure complaints alleging the failure to list non-profit entities in response to Question 9. Commissioner Binder commented that she would like more research on these issues before making any changes. Commissioner Weavill expressed concern about waiting on these proposals since the Commission has only done rule-making twice in five years. Commissioner Binder noted that there are now standing subcommittees on regulations.

At approximately 11:10 a.m., upon motion made by Commissioner Cheit, duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn the meeting.

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,
Frederick K. Butler, and Ross Cheit.**

Respectfully submitted,

George E. Weavill, Jr.
Secretary